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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
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| 10/761,648      | 01/21/2004  | David C. Curtis      | M314                | 3331             |

30406 7590 09/27/2005

ROBERT L. MARSH  
54 DANADA DRIVE  
P.O. BOX 4468  
WHEATON, IL 60187-4468

EXAMINER

SORKIN, DAVID L

|          |              |
|----------|--------------|
| ART UNIT | PAPER NUMBER |
|----------|--------------|

1723

DATE MAILED: 09/27/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application No.

10/761,648

Applicant(s)

CURTIS, DAVID C.

Examiner

David L. Sorkin

Art Unit

1723

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 04 March 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-13 is/are pending in the application.
- 4a) Of the above claim(s) 13 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)):

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Election/Restrictions***

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
  - I. Claims 1-12, drawn to a marinating machine, classified in class 366, subclass 233.
  - II. Claim 13, drawn to a method of attaching a wheel, classified in class 29, subclass 894.

The inventions are distinct, each from the other because of the following reasons:

2. Inventions I and II are related as (I) a machine and (II) a process of making a subcombination part thereof. The process could be used to attach a wheel for many other types of machines, such as a train car, wagon, pulley etc. The machine as claimed does not require the wheel of process of making.
3. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.
4. Because these inventions are distinct for the reasons given above and the search required for Group I is not required for Group II, restriction for examination purposes as indicated is proper.
5. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art because of their recognized divergent subject matter, restriction for examination purposes as indicated is proper.

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6. During a telephone conversation with Robert Marsh on 19 September 2005 a provisional election was made without traverse to prosecute the invention of Group I, claims 1-12. Affirmation of this election must be made by applicant in replying to this Office action. Claim 13 is withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

***Claim Rejections - 35 USC § 112***

7. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

8. Claims 5-10 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. These claims contain subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention. While separate embodiments of the paddle assembly are described, no machine having first and second paddle assemblies is described. The specification only explains how to make and use a machine having one paddle assembly, though different embodiments of the paddle assembly are described.

***Claim Rejections - 35 USC § 102***

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

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10. Claims 1-4 rejected under 35 U.S.C. 102(b) as being anticipated by Gontero (US 5,520,457). Regarding claims 1 and 3, Gontero ('457) discloses a machine having first and second axes (4) one first and second parallel axes, a motor (5), a drum (1) having a third axis of rotation; said drum rotatable supported by the first and second axes (see Fig. 2), said first and third axes defining a first plane, said second and third axes define a second plane, and said first and second planes intersecting at an angle of at least one hundred degrees (see Fig. 2), said motor drivingly engaged to only said first axle by means for drivingly rotating only said first axle with power from said motor (see Fig. 1). Regarding claims 2 and 4, at least one wheel (2) on said first axle, said wheel fixed for rotation with said first axle and having an outer surface contactable by said drum for rotating said drum (see Fig. 2).

11. Claims 11 and 12 are rejected under 35 U.S.C. 102(b) as being anticipated by Becheiraz (US 3,861,653). Becheiraz ('653) discloses a paddle assembly (15) comprising a first paddle (one of 17-20); a second paddle another of (17-20) and semi-rigid rod (116) having a memory for retaining said rod to an at rest orientation.

### ***Conclusion***


12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David L. Sorkin whose telephone number is 571-272-1148. The examiner can normally be reached on 9:00 -5:30 Mon.-Fri..

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wanda L. Walker can be reached on 571-272-1151. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
David L. Sorkin  
Primary Examiner  
Art Unit 1723

DLS